the case of *Commissioners of Inland Revenue v. Maxse*[14] [at p. 657]:—

"A 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator."

and it is no reflection on a useful and respectable body of men to say that such a description could not with any respect for accuracy in the use of language be applied to the work of a Police Inspector.

As regards Class II, a Police Inspector is clearly not a shop proprietor, or assistant, or a cashier or a collector, or a store-keeper. Nor could his occupation be properly described as that of a master tradesman, whether a tradesman be regarded as one engaged in retail trade or, in what may be a distinctive Scottish usage, as a skilled workman. I think, too, it is clear from the fact that the word "Superintending" occurs in brackets that it is used adjectivially and as qualifying the preceding substantives and not in itself substantively as adding to them.

Turning to Class III, it is clear that the occupation of a Police Inspector cannot be said to be that of an engineer, a mechanic, a tradesman, or a labourer, and I do not think the plaintiff is in any way helped by a consideration of the general word "etc." It would be difficult to imagine a clearer example of a general word following on a series of particular words and so to be read *ejusdem generis* with them. The word "tradesmen" here is clearly used in the sense of a skilled workman. The one thing that is common to the conceptions of an engineer, mechanic, any other skilled workman and a labourer is the idea of the application of human physical force, whether with or without skill, to material objects so as to effect some sort of transmogrification in them and in the present context it would be impossible to include any occupation not involving that idea in the general expression *etcetera*.

I am thus compelled to say that the occupation of a Police Inspector is not one specified in the Corporation's classification of occupations, and I do not think there can be any doubt that the insured "engaged" in that occupation without the Corporation's consent. It is admitted that there is no question of consent. As regards the question of whether he "engaged" in that occupation, the wording of the proposal clearly envisages that an insured person might have more than one occupation. Moreover, the clear words of Condition 5 do not differentiate in any way between the case where an insured person engages in a new occupation in addition to his previous one and the case where the new occupation is in substitution for the previous one, and, apart from the ordinary usage of the English language, I am fortified in thinking that no such differentiation was intended by the reference in the first sentence of the condition to "any" change "in" (not "of") occupation.

It follows, then, that apart from and in addition to his not being covered by the policy at the time of the accident which caused his death for the reasons I have set out at length in connection with the China Policy, the Eastern United Policy was void as a result of the operation of this condition.

In both cases, therefore, there will be judgment for the defendant Company with costs.

Before departing from these cases, I think I should in common fairness say a word regarding what I may call the moral aspect. I need hardly say that I have felt the greatest possible human sympathy with the plaintiff and that it is with very great regret that I have found myself compelled to give judgment against her. On the other hand, apart from the considerations that this is a court of law and not a court of morals, that contracts are contracts, and that hard cases make bad law, it is to be remembered that insurance companies are in a somewhat distinctive position. No doubt they are in business primarily for their own profit and not for the benefit of the public. Nevertheless, it is of the essence of their business that they should incur potential obligations to a large number of members of the public which it is essential in the public interest they should be able to observe. No doubt the premiums they charge are calculated in the light of the risks they incur so as to maintain a necessary measure of financial stability and the necessity for maintaining such financial stability in the public interest is a considerable justification for resisting claims which are considered to go beyond the risks for which premia have been charged on the basis of which the company's calculations are based.

Judgment for the defendants.

J. A. PARKER v. LAM SOON CANNERY CO.

[Orig. Civ. Juris. (Knight, J.) October 7, 1952]

[Singapore — Suit No. 604 of 1951]

Contract — Sale of copra F.O.B. Singapore — "Guarantee of 5% loss in weight" at destination — Evidence Ordinance, s. 99.

Under 2 contracts in writing, the plaintiff bought from the defendants 200 and 100 tons respectively of copra F.O.B. Singapore. In the 1st contract under the heading "shipment" appeared the words "April 1949 on 5% guarantee loss of weight". In the 2nd contract under the heading "quality" appeared the words "Straits Fair Merchantable mixed. With guarantee of 5% loss in weight at port of destination". It was agreed that full weight was delivered on board ships at Singapore but at destination it was found that there was a shortage of

weight in excess of 5%. The goods comprised in the last contract had been transhipped in course of transit. The plaintiff claimed damages for the shortage in excess of 5%.

Held, (1) evidence was admissible of the meaning of the expressions quoted above in mercantile usage (under section 99 of the Evidence Ordinance *); (2) on the evidence, these expressions meant that loss in weight exceeding 5% whilst the cargo was in transit should fall to the sellers' account.

Brinkmann & Co. v. Hoe Seng Hin & Co.(1) distinguished.

Case referred to:—

(1) *Brinkmann & Co. v. Ho Seng Hin & Co.* (1930) S.S.L.R. 225.

CIVIL SUIT.

S. H. D. Elias for the plaintiff.

Dr. C. H. Withers Payne for the defendants.

Cur. Adv. Vult.

Knight, J. : — The facts of this case present no difficulty as they have been admitted prior to trial by both parties. It is agreed that in March and July 1949 the plaintiff purchased 200 and 100 tons of copra from the defendant Company for export to certain merchants in Europe. Two contracts (both F.O.B. Singapore) were drawn up by the parties and in the former (Exhibit 2) under the heading "Shipment" appear the words "April 1949 on 5% Guarantee Loss of Weight" whilst on the latter (Exhibit 3) — under "Quality" are the words "Straits Fair Merchantable Mixed. With guarantee of 5% (five per cent) loss in weight at port of destination".

It is admitted that the copra was delivered to the two vessels concerned where it was found to weigh 200 and 100 tons on the respective dates of delivery and it is further agreed that when the cargo reached its destination, it was on each occasion found to be short weight — the March transaction being nearly two tons short and the July, nearly three. The value of copra also, is not in dispute.

The plaintiff claims that under each contract the seller (i.e. the defendant Company) had agreed to reimburse him for the value of any short weight in excess of 5% and thus claims damages in the sum of $2,826.16 which is the agreed value of the shortages (exceeding 5%) in the two shipments plus certain small charges detailed in the Statement of Claim for "Superintendent's fees".

During the course of the trial the plaintiff made it clear that invariably there is a heavy moisture content in copra and that as this moisture dries out the weight of the cargo is bound to be affected. For this reason he says, the normal practice for produce merchants here is to contract with sellers that they (the latter) shall be responsible for losses in weight in excess of 5% at the port of destination. The two sentences in those contracts quoted above, says the plaintiff, although it is not difficult to quarrel with their grammar, are well known in the trade to mean that losses in weight exceeding 5% whilst the cargo is in transit shall fall to the sellers account. This evidence, though his experience is admittedly somewhat limited, is fully corroborated by Mr. Leclercq of Moine Comte & Co. Ltd. who said that in the trade no meaning other than this can possibly be attributed to the contracts.

I have no hesitation in accepting this evidence. It was not contradicted by the defendant Company either from the witness box or in the agreed bundle of correspondence where quite obviously the plaintiff's claim would have been disputed if the meaning attributed to those words in the contract had not been in accordance with trade usage. No doubt it may seem somewhat hard on a seller finding himself responsible for losses in weight incurred e.g. during transhipment. Mr. Leclercq, however, points out that many sellers expressly exclude such risks in the body of their contracts and that unless transhipment is specifically excluded, he would expect the seller to be held liable (even on an F.O.B. contract) to the port of destination.

As to the remaining points raised on behalf of the defendant Company, the plaintiff has given uncontradicted evidence that he has given credit to the purchasers in Europe for the sums claimed in this suit and their claim is now agreed not to be time barred. *Brinkmann & Co. v. Hoe Seng Hin & Co.*(1), in my opinion, has no application to the facts in this case. That case dealt with deterioration in quality of goods sold F.O.B. Singapore through causes beyond the control of the seller which operated during the voyage. In that case Stevens, J., said "The contract is for delivery F.O.B., Singapore, and under such a contract the goods after being placed on board are ordinarily at the buyer's risk." That proposition, no doubt is true but here both parties knew quite well that the copra was likely to lose weight as its moisture dried out. They anticipated exactly what in fact happened and contracted to make provision for the exact set of circumstances which resulted from the copra drying through the course of natural process. The "ordinary" procedure as applied to F.O.B. contracts did not, therefore, apply.

It follows that there will be judgment for the plaintiff for $2,826.16 and costs.

Judgment for the plaintiff.

* This is not mentioned in the judgment, but the point arose during the hearing and a ruling was given thereon. — *Ed. M.L.J.*